

PATENT

Atty. Dkt. No. YOR920010320US1

REMARKS

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are anticipated or made obvious under the provisions of 35 U.S.C. § 102 and § 103. Thus, the Applicants believe that all of these claims are now in allowable form.

I. REJECTION OF CLAIMS 1-7, 10-17, 20-29 AND 31-42 UNDER 35 U.S.C. § 102

The Examiner has rejected claims 1-7, 10-17, 20-29 and 31-42 in the Office Action under 35 U.S.C. § 102 as being anticipated by Swildens, et al. (US Patent Number 6,694,358, issued February 17, 2004, hereinafter referred to as "Swildens"). The Applicants respectfully traverse the rejection.

Swildens teaches a performance computer network method. The load balancing taught in Swildens comprises of determining the traffic loads of a plurality of customer web servers, comparing the traffic loads of the plurality of customer web servers and then the POP DNS server choosing the customer web server that has a traffic load that is lower than traffic loads of other customer web servers in the plurality of customer web servers. (See Swildens, Col. 3, Lines 26-38; Col. 9, Lines 1-13.)

The Examiner's attention is directed to the fact that Swildens fails to teach, show or suggest determining a load on a primary server or making decisions based on comparing the load to thresholds, as positively claimed by the Applicants. Specifically, Applicants' independent claim 1 recites:

1. A method, in a network comprising a primary server and at least one offload server, for dynamic offloading of processing requests from said primary server to said at least one offload server, the method comprising the steps of:
 - determining a load on said primary server;
 - if the load on said primary server is less than a first threshold, serving processing requests at said primary server; and
 - if the load on said primary server exceeds said first threshold, then offloading at least a portion of said processing requests to said at least one offload server. (Emphasis Added.)

Applicants' independent claims 11, 21, 22, 23, 32, 41 and 41 recite similar language. Applicants' invention advantageously compares the load on a primary server

PATENT

Atty. Dkt. No. YOR920010320US1

to a threshold. The threshold is based on a number of parameters, including but not limited to: network load, CPU utilization, connections per second, various bandwidth loads, various memory loads, etc. (See Applicants' Specification, page 5, line 26 - page 6, line 2.) Applicant's threshold is not dependent on the performance of another primary server. The Applicants' invention provides costs savings, as in one example, by reducing offloaded work from 60% of the work demanded by the users to less than 1% of it. (See Applicants' Specification, page 8, lines 8-15.)

In contrast, Swildens fails to teach, show or suggest determining a load on a primary server or making decisions based on comparing the load to thresholds. Rather Swildens only makes decisions based on the comparison of the traffic loads of the plurality of customer web servers. (See Swildens, Col. 3, Lines 26-38; Col. 9, Lines 1-13.) In addition, Swildens clearly teaches away from the Applicants' invention because Swildens requires more data collection than the Applicants' invention. Applicants' invention determines the load on only one server, unlike Swildens, which determines the load on a plurality of customer web servers. Moreover, the Applicants' invention is not anticipated by Swildens because Applicants' invention compares load traffic data to a predefined threshold, unlike Swildens, which compares load traffic data of a plurality of customer web servers. Comparing to a threshold is more efficient because it requires less calculations, less comparisons and is less time consuming than determining the load traffic data at a plurality of web servers, comparing the load traffic data of each web server to the plurality of web servers and determining which web server has the lowest load traffic.

Therefore, Applicants respectfully submit that independent claims 1, 11, 21, 22, 23, 32, 41 and 42 are clearly patentable and not anticipated by Swildens. Furthermore, dependent claims 2-7, 10, 12-17, 20, 24-29, 31, and 33-40 depend, either directly or indirectly, from claims 1, 11, 21, 22, 23, 32, 41 and 42 and recite additional limitations. As such, and for the exact same reason set forth above, the Applicants submit that claims 2-7, 10, 12-17, 20, 24-29, 31, and 33-40 are also patentable and not anticipated by Swildens. As such, the Applicants respectfully request the rejection be withdrawn.

PATENT

Atty. Dkt. No. YOR920010320US1

II. REJECTION OF CLAIMS 8-9, 18-19 AND 30 UNDER 35 U.S.C. § 103

The Examiner has rejected claims 8-9, 18-19 and 30 in the Office Action under 35 U.S.C. § 103 as being unpatentable over Swildens in view of Gupta, et al. (US Patent Number 6,374,305, issued April 16, 2002, herein referred to as "Gupta"). Applicants respectfully traverse the rejection.

The teachings of Swildens have been discussed above. Gupta teaches a web applications interface system in a mobile-based client-server system. Gupta teaches architecture that incorporates two specialized software layers. (See Gupta, Abstract.) The layers employ intelligent filtering capabilities, thereby reducing redundant or otherwise unwanted message transmission. (See *Id.*)

However, Gupta fails to bridge the substantial gap left by Swildens. Specifically, Gupta also fails to disclose determining a load on a primary server or making decisions based on comparing the load to thresholds, as positively claimed by the Applicants' independent claims. (See *supra*.)

As stated above, Swildens simply does not teach or suggest determining a load on a primary server or making decisions based on comparing the load to a threshold, as positively claimed by the Applicants. Rather, Swildens only determines the traffic loads at customer web servers and then makes decisions based on the comparison of the traffic loads of the plurality of customer web servers. (See Swildens, Col. 3, Lines 26-38; Col. 9, Lines 1-13.) This deficiency is not bridged by the teaching of Gupta because Gupta teaches architecture that incorporates two specialized software layers. (See Gupta, Abstract.) The layers employ intelligent filtering capabilities, thereby reducing redundant or otherwise unwanted message transmission. (See *Id.*)

In arguendo, even if Swildens and Gupta were combined, the combination would still not teach or suggest Applicants' invention. The combination of Swildens and Gupta would only teach choosing a customer web server based on a comparison of the traffic loads on each of the plurality of web servers, which employ two specialized software layers. Therefore, the combination of Swildens and Gupta does not teach or suggest Applicants' invention as recited in the independent claims.

Dependent claims 8-9, 18-19 and 30 depend, either directly or indirectly, from claims 1, 11 and 23 and recite additional limitations. As such, and for the exact same

PATENT

Atty. Dkt. No. YOR920010320US1

reason set forth above, the Applicants submit that claims 8-9, 18-19 and 30 are also not made obvious by the teachings of Swildens and Gupta.


Conclusion

Thus, the Applicants submit that all of these claims now fully satisfy the requirement of 35 U.S.C. §102, and §103. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

5/4/05
Moser, Patterson & Sheridan, LLP
595 Shrewsbury Avenue
Shrewsbury, New Jersey 07702


Kin-Wah Tong, Attorney
Reg. No. 39,400
(732) 530-9404